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NOTES.

SALES OF GOODS UNDER STATUTE OF FRAUDS.—An admirable instance of the confusion resulting from the passage of the Statute of Frauds[1] is afforded by the conflict of authority as to what constitutes a contract for the sale of goods under that statute. The earlier view in England was that the Statute referred only to contracts of immediate sale,[2] but this was soon abandoned, and it is now everywhere recognized that the mere fact that a contract involving the transfer of goods is executory will not exclude it from the operation of the Statute.[3] But when the goods are to be manufactured, or when work and labor are necessary to

[1]For the provisions in the various state statutes similar to the English Statute of Frauds. See Wood, Statute of Frauds 528. In Iowa, the rule does not apply when the article sold is not at the time of the contract owned by the vendor and ready for delivery, but labor, skill, or money is necessarily to be expended in producing or procuring it. Iowa Code § 4626.

[2]Towers *v.* Osborne (1722) 1 Strange 506; Clayton *v.* Andrews (1767) 4 Burr. 2101.

[3]Rondeau *v.* Wyatt (1792) 2 H. Bl. 63; 3 Parsons, Contracts (9th ed.) *54. This rule was codified in England by Stat. 9 Geo. IV, ch. 14, § 7. When the goods contracted for are ready for delivery at the time. the fact that they are to be delivered will not turn the contract into one for work and labor and thereby prevent the operation of the Statute. Barbour *v.* Disher (S. C. 1858) 11 Rich. L. 347; Astey *v.* Emery (1815) 4 M. & S. 262.

prepare them for delivery, the conflict of opinion becomes little short of chaotic.

After a considerable period of uncertainty,[4] the English courts, in the case of *Lee* v. *Griffin*,[5] finally adopted the rule that whenever the ultimate result of the contract is the transfer of a chattel the contract is for the sale of goods and within the Statute. Other rules often applied are that a contract is for the sale of goods or for work and labor, according as the value of the chattel on delivery is due principally to the material of which it is made, or to the work and labor employed in its manufacture or preparation;[6] or that a contract is within or without the operation of the Statute according as the work and labor is performed on the property of the vendor or on that of the vendee.[7] The conflict of judicial opinion on this subject is evidently the result of a struggle to avoid in individual cases the unjust effects of construing the Statute according to the ordinary meaning of the words employed.[8] It is considered unjust that one should be forced to lose the anticipated compensation for his skill and labor.[9] Hence, the New York courts originally refused to apply the Statute whenever any work or labor was to be performed on the goods,[10] though a later extension of the rule included within the operation of the Statute all contracts involving work and labor merely in preparing the goods for delivery.[11] However, it is difficult to see the reason for the zeal of the courts in protecting contracts involving work and labor, where they result in the production or preparation of an article which may be easily disposed of elsewhere, if not under the contract. The Massachusetts courts have recognized this, and have held that when the goods can be disposed of by the vendor in the general course of his business, the contract is within the Statute, although they are to be manufactured or prepared for delivery by the vendor. But if the goods are to be manufactured or prepared in accordance with a special order, the contract is one for work and labor and the Statute does not apply. This rule represents the view of the weight of authority in this country,[12] and was adopted with slight modifications in the Uniform Sales

[4]See Smith *v.* Surman (1829) 9 B. & C. 561. Here, each of three judges employed a different rule in reaching the same conclusion.

[5](1861) 1 B. & S. 272.

[6]Pitkin *v.* Boyes (1869) 48 N. H. 294; Cason *v.* Cheely (1849) 6 Ga. 554.

[7]Allen *v.* Jarvis (1849) 20 Conn. 38; Courtright *v.* Stewart (N. Y. 1854) 19 Barb. 455.

[8]Wood, Statute of Frauds 551.

[9]See Cason *v.* Cheely, *supra.*

[10]Sewall *v.* Fitch (N. Y. 1828) 8 Cow. 215; Parsons *v.* Loucks (1871) 48. N. Y. 17.

[11]Cooke *v.* Millard (1875) 65 N. Y. 352; Bates *v.* Coster (N. Y. 1874) 1 Hun 400. This extension involves an obvious inconsistency, as work and labor performed in preparation deserve compensation on grounds of justice as much as if performed in the manufacture of goods. Some of the New York cases lean toward the Massachusetts rule. See Hinds *v.* Kellogg (1891) 13 N. Y. Supp. 922, affd. (1892) 133 N. Y. 536; Passaic Mfg. Co. *v.* Hoffman (N. Y. 1871) 3 Daly 495.

[12]Mixer *v.* Howarth (Mass. 1839) 21 Pick. 205; Goddard *v.* Binney (1874) 115 Mass. 450; *In re* Gies' Estate (1910) 160 Mich. 502; Puget Sound Machinery Depot *v.* Rigby (1895) 13 Wash. 264; Meincke *v.* Falk (1882) 55 Wis. 427; Moore *v.* Camden Marble & Granite Works (1906) 80 Ark. 274; Courtney *v.* Bridal-Veil Box Factory (1909) 55 Ore. 210.

Act, recently enacted in several states.[13] It may undoubtedly satisfy the demands of justice in a number of particular instances. But it is inconsistent with the actual meaning of the words of the Statute, and consequently must stand condemned. A sale is a transfer of property for a pecuniary consideration.[14] Any contract, therefore, which involves the transfer of goods for a pecuniary consideration is a contract for the sale of goods under the Statute. This is the English rule, and seems to be the most satisfactory determination of the question.[15]

A recent case, *Morse* v. *Canaswacta Knitting Co.* (App. Div. 1912) 139 N. Y. Supp. 634, affords an illustration of the extent to which the courts will go in their attempt to prevent injustice in particular cases through the application of the Statute. The contract was for a belt to be manufactured in a special manner by a stranger to the contract. It was held, one judge dissenting, that the contract did not fall within the terms of the Statute, because the belt was of a special pattern and could not be disposed of in the general market.[16] Assuming that where work is to be done by the vendor, the contract is one for work and labor and not for the sale of goods, it would still be hard to justify the decision of the case, where the vendor was merely to procure a chattel from a third party and deliver it to the vendee. This cannot be called a contract for work and labor, and in fact, the court did not so designate it, but rested its decision on the ground of hardship to the vendor. The opinion of the majority of courts is that a contract for the transfer of goods to be manufactured by a third party is one for the sale of goods, and within the Statute.[17] But where the goods are to be made in accordance with a special order, there are authorities which support the holding in the principal case.[18] It has been aptly suggested by a former New York court[19] that such an obvious misconstruction of the language of the Statute of Frauds amounts practically to a repeal, which might better be left to the discretion of the legislature.

CONTROL OF EQUITY OVER ELECTIONS.—No principle is more frequently stated than that equity will not interfere to protect or enforce a purely political right, and it is generally recognized that elections

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[13]Uniform Sales Act § 4.

[14]2 Bl. Comm. *446; 2 Kent, Comm. *468.

[15]Lee *v.* Griffin, *supra;* Isaacs *v.* Hardy (1884) Cab. & E. 287; Canada Bank Note Co. *v.* Toronto Ry. (1895) 22 Ont. App. 462; Burrell *v.* Highleyman (1888) 33 Mo. App. 183; see Cooke *v.* Millard, *supra,* where the court approves the English rule, but refuses to depart from the principles of former decisions. The fact that work and labor are involved in the contract, as well as the transfer of property in goods, is immaterial, as it is the universal rule that where an entire contract comes partly under the Statute of Frauds it is wholly unenforceable. Atwater *v.* Hough (1861) 29 Conn. 508; 3 Parsons, Contracts (9th ed.) *53.

[16]It would seem that the court was here applying the rule of the Uniform Sales Act, which has been adopted in New York, Personal Property Law § 85, though no mention was made of this in the opinion.

[17]Milar *v.* Fitzgibbons (N. Y. 1881) 9 Daly 505; Smalley *v.* Hamblin (1898) 170 Mass. 380; Atwater *v.* Hough, *supra;* see Pawelski *v.* Hargreaves (1885) 47 N. J. L. 334.

[18]Bird *v.* Muhlinbrink (S. C. 1845) 1 Rich. L. 199; Forsyth & Ingram *v.* Mann Bros. (1895) 68 Vt. 116.

[19]See Robertson *v.* Vaughn (N. Y. 1850) 5 Sandf. 1.